CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

June 15, 1999

S. 335
Deceptive Mail Prevention and Enforcement Act

As ordered reported by the Senate Committee on Governmental Affairs on May 20, 1999

SUMMARY

S. 335 would establish a number of new federal crimes and restrictions relating to deceptive mailings and sweepstakes and would increase the penalties for such offenses. CBO estimates that implementing this legislation would not result in any significant impact on the federal budget. Because enactment of S. 335 could affect direct spending and receipts, pay-as-you-go procedures would apply to the bill. However, CBO estimates that any impact on direct spending and receipts would not be significant.

S. 335 contains several private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but the costs imposed by these mandates would not exceed the statutory threshold established in UMRA ($100 million in 1996, adjusted annually for inflation). This legislation contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Because S. 335 would establish new federal crimes relating to deceptive mailings and sweepstakes, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that any increase in federal costs for law enforcement by the Postal Service or court proceedings would not be significant, however, because of the small number of additional cases likely to be involved. Any additional costs to the Postal Service would be classified as off-budget, while any increased costs to the federal judiciary would be subject to appropriation.

Because those prosecuted and convicted under S. 335 could be subject to civil penalties, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues). CBO expects that any additional receipts would be less than $500,000 annually.

This legislation also would provide that any civil penalties collected from enforcement of laws relating to "nonmailable matter" (mainly deceptive mailings) would be paid to the Postal Service to cover administrative and related costs, up to $500,000 a year. Any such payments would be direct spending, but CBO estimates that these amounts would be less than $500,000 a year because we do not expect collections of fines to exceed that amount.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting S. 335 could affect both direct spending and receipts, but CBO estimates that any such effects would be less than $500,000 a year.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 335 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 335 would create several new private-sector mandates. Firms that use the postal system to distribute unsolicited advertisements would be required to remove references to the Postmaster General from those advertisements. Firms that operate sweepstakes or contests through the mail would face multiple requirements. They would be required to include a number of prominent disclosures in their mailings and to honor requests from individuals to be omitted from future mailings. Based on information from the Direct Marketing Association, CBO estimates that the total costs of these mandates to the private sector would be well below the threshold specified in UMRA.

In order to keep firms from implying that their products or services are endorsed or approved by the federal government, federal law already prohibits most uses of federal symbols or the names and titles of federal agencies and officers in mailed advertisements. S. 335 would specifically extend that prohibition to the name and title of the Postmaster General. In order to comply with the mandate, firms would need to remove references to the Postmaster General from their existing advertisements. Because printing and postage constitute the bulk of firms' expenses in producing and distributing advertisements through the mail and the new prohibition would do little to affect either, CBO expects that this mandate would not have a significant impact on firms' costs of doing business.

The disclosures that sweepstakes and contest operators would be required to make include: an explanation that purchase of the firm's products affects neither the odds of winning nor inclusion in future mailings; a clearly-written, understandable, and easily found statement of rules, conditions, fees, and entry procedures; and a description for each prize, giving the quantity, the retail value, and a numerical statement of the odds of winning. Firms would also be required to put disclaimers on facsimile checks and to refrain from representing a person as a winner unless that person has won a prize. The largest sweepstakes firms already make the vast majority of these disclosures. To comply with the mandate, some firms might have to do no more than add a single disclosure, such as a numerical statement of odds. Other firms might have to do considerably more. The costs of redrafting and redesigning mailings would thus vary from firm to firm, but would not, in general, be substantial. CBO anticipates that sweepstakes and contest operators would endeavor to keep the number of pages of their mailings constant in order to avoid increases in printing and postage costs. Consequently, although variation within the industry makes a precise estimate difficult, the cost to firms of adding additional disclosures would probably be small.

S. 335 would require sweepstakes operators to honor direct written requests from individuals to be excluded from future mailings. The firms would be required to store and to honor the requests for five years. Many firms already honor such requests, and, because there is little reason to believe that the number of requests firms receive would increase significantly in the future, it is unlikely that firms' costs would increase significantly because of this mandate. Seventy to eighty percent of all recipients do not respond to mailings from major sweepstakes operators, but only a small number of people request to be excluded from future mailings. The majority of individuals just discard unwanted mailings.

Sweepstakes and contest operators that send more than 500,000 mailings per year would also be required to participate in the creation of a national notification system that would allow individuals to make a single request that their names be removed from the mailing lists of all sweepstakes and contest operators. The notification system would have to forward written requests from individuals to participating firms within 45 business days. Such firms would be required to include information about the notification system in their mailings. Most sweepstakes firms already participate in the Direct Marketing Association's Mail Preference Service, which is similar to the notification system required by S. 335. The Mail Preference Service, however, deals with all forms of direct mail, including catalogs, coupons, and other advertisements. In order to comply with the mandate, sweepstakes and contest operators would need to establish a system limited to sweepstakes and contest mailings. The Direct

Marketing Association budgets approximately $500,000 per year to operate the Mail Preference Service. CBO expects that it would cost sweepstakes and contest operators a similar amount each year to operate the notification system. Startup costs would increase the amount required in the first year.

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